



**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

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|--------------------|---|------------------------|
| IN THE MATTER OF: |) | |
| |) | |
| RAHEL MESFIN, |) | |
| |) | |
| Complainant, |) | |
| |) | Charge No.: 2000CF0567 |
| and |) | EEOC No.: 21B993107 |
| |) | ALS No.: 11416 |
| COLLEGE OF DUPAGE, |) | |
| |) | |
| |) | |
| Respondent. |) | |

RECOMMENDED ORDER AND DECISION

On October 19, 2000, Complainant, Rahel Mesfin, filed a complaint on his own behalf against Respondent, College of DuPage. That complaint alleged that Respondent discriminated against Complainant on the basis of a handicap when it harassed him and otherwise denied him the opportunity to perform his job. The complaint further alleged that Respondent retaliated against Complainant when he complained about unlawful discrimination.

Instead of filing an answer to the complaint, Respondent filed a motion to dismiss. Complainant filed a written response to that complaint. The matter is now ready for decision.

FINDINGS OF FACT

The following findings of fact were derived from the record file in this matter.

1. Complainant filed his charge of discrimination against

Respondent with the Illinois Department of Human Rights (IDHR) on September 22, 1999.

2. The IDHR dismissed Complainant's charge for lack of substantial evidence on June 28, 2000.

3. Complainant did not file a Request for Review of the IDHR's decision to dismiss his charge.

4. Complainant filed his complaint in this forum on October 19, 2000.

CONCLUSIONS OF LAW

1. The IDHR's dismissal of Complainant's charge was a final order disposing of that charge.

2. Complainant's only avenue for challenging the IDHR's decision was to file a timely Request for Review.

3. The Human Rights Commission has no authority to consider the complaint filed by Complainant.

4. The complaint in this matter must be dismissed with prejudice.

DISCUSSION

Complainant filed his charge of discrimination against Respondent on September 22, 1999. The Illinois Department of Human Rights (IDHR) dismissed that charge for lack of substantial evidence on June 28, 2000. Complainant did not file a Request for Review of the IDHR's decision to dismiss his charge. Instead of filing a Request for Review, on October 19, 2000, Complainant filed his complaint in this forum.

Under section 5/7A-102(G)(1) of the Human Rights Act (775 ILCS 5/1-101 et seq.), once it has completed its investigation, the IDHR "shall either issue and file a complaint ... or shall order that no complaint be issued and dismiss the charge with prejudice without any further right to proceed." In the instant case, the IDHR determined that no complaint should be issued and that the charge should be dismissed with prejudice. Once that determination was made, Complainant lost any opportunity to file a complaint on his own behalf before the Human Rights Commission. **Wallace v. Illinois Human Rights Commission**, 261 Ill. App. 3d 564, 633 N.E.2d 851 (1st Dist. 1994). At that point, Complainant's only remedy was to file a Request for Review.

Complainant argues that he filed within the 30-day window that opened 365 days after he filed his initial charge. However, Complainant's interpretation of the Human Rights Act is insupportable. Under 5/7A-102(G)(2), an aggrieved party may file his own complaint during the 30-day window "if the Director [of the IDHR] has not sooner issued a report and determination." In other words, the 30-day window only opens if the IDHR has not already acted. In the instant case, because the IDHR acted within less than 365 days, the 30-day window never opened. As a result, Complainant never had a right to file a complaint before the Commission.

RECOMMENDATION

Based upon the foregoing, the Human Rights Commission has no

authority to hear the complaint filed in this matter. Accordingly, it is recommended that Respondent's motion to dismiss be granted and that the complaint in this matter be dismissed in its entirety, with prejudice.

HUMAN RIGHTS COMMISSION

BY: _____
MICHAEL J. EVANS
ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION

ENTERED: May 3, 2001